

Editor's note: Reconsideration denied by Order dated June 10, 1985.

UTAH WILDERNESS ASSOCIATION, ET AL.
CLIVE KINCAID

IBLA 84-182

Decided April 12, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, excluding certain lands from further wilderness review. (U-933).

Affirmed in part; reversed in part.

1. Federal Land Policy and Management Act of 1976: Wilderness-- Wilderness Act

In assessing the presence or absence of wilderness characteristics in an inventory unit, BLM necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome simply by expressions of disagreements.

2. Federal Land Policy and Management Act of 1976: Wilderness-- Wilderness Act

A BLM decision based on reassessment of the wilderness characteristics of a unit will be reversed where it is established that BLM failed properly to reassess the unit, and it is also established that such failure caused BLM to reach an incorrect conclusion.

APPEARANCES: George W. Pring, Esq., Denver, Colorado, Wayne McCormack, Esq., Salt Lake City, Utah, for Utah Wilderness Association et al.; Clive Kincaid, Boulder, Utah, pro se; David K. Grayson, Esq., Assistant Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management; James A. Holtkamp, Esq., Salt Lake City, Utah, for intervenor, Atlas Minerals; Robert G. Pruitt III, Esq., Salt Lake City, Utah, for intervenor, Pine Grove Associates.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

In Utah Wilderness Association (Utah Wilderness I), 72 IBLA 125 (1982), this Board considered an appeal of the Bureau of Land Management's (BLM's) final intensive wilderness inventory decision for Utah. The appeal involved 29 units and an area of approximately 925,000 acres. The Board reversed BLM

on two units involving 16,310 acres, and it set aside and remanded to BLM 19 units totaling over 800,000 acres.

On October 14, 1983, BLM issued its final decision on the remand (Decision on Remand). 48 FR 46858 (Oct. 14, 1983). BLM determined that over 538,000 acres in 12 units exhibited wilderness characteristics and accorded such acreage wilderness study area (WSA) status. Approximately 270,000 acres in 9 units were dropped from further study. BLM granted the right of appeal. 1/

Once again Utah Wilderness Association and 13 other organizations 2/ (hereinafter appellants) have appealed. They challenge BLM's decision as it relates to approximately 250,000 acres in 9 units. Clive Kincaid (appellant Kincaid) also filed an appeal seeking review of BLM's decision on the Mt. Ellen/Blue Hills unit (UT-050-238) and the Mt. Pennell unit (UT-050-248). 3/ Two parties sought and were granted intervention in this case. Pine Grove Associates filed a statement in support of BLM's position to drop the Central Wah Wah unit (UT-040-204B) from further study. Atlas Corporation submitted a response to the statements of reasons as they relate to the Mt. Pennell unit (UT-050-248). On December 5, 1984, the Board granted a request by BLM for expedited consideration of this case.

[1] In Utah Wilderness I and in numerous other wilderness cases the Board has set forth the standards which guide our review of such cases. The same shall apply in this case involving review of a reassessment decision. BLM's subjective judgment of an area's naturalness qualities and its subjective determinations whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to

1/ The decision stated:

"Upon publication of these decisions in the Federal Register, a 30-day appeal period is initiated. Any person who has disagreement with this decision and has information which may influence the decision may file an appeal with the Interior Board of Land Appeals by following administrative procedures applicable to formal appeals." 48 FR 46589 (Oct. 14, 1983). We note that this right of appeal is clearly more expansive than that provided in 43 CFR 4.410; however, this case presents no issue bearing on this discrepancy.

2/ The other organizations are: Public Lands Institute of the Natural Resources Defense Council, Southern Utah Residents Concerned about the Environment, Sierra Club Utah Chapter, Sierra Club Cache Group, Utah Audubon Society, Slickrock County Council, Slickrock Outdoor Society, southwest Resource Council, Wasatch Mountain Club, American Wilderness Alliance, Friends of the Earth, and The Wilderness Society.

3/ In an "Affidavit of Standing" filed with his appeal, Kincaid states that he is a former BLM employee, who has spent 2-1/2 years as a District Planning Coordinator and 3 years as a District Wilderness Coordinator. He lists extensive experience with BLM's intensive wilderness inventory process. He states that he personally visits and uses the areas involved in his appeal, and that he owns a private residence that is within 30 miles of each of those areas. In a separate affidavit filed with his appeal, Kincaid states that he spent approximately 4 weeks between September and December 1981 hiking, driving, and photographing the 2 units he has appealed and an unspecified time during the winter months of 1981-82 photographing those areas from the air.

considerable deference. Committee for Idaho's High Desert, 85 IBLA 54, 56 (1985); The Wilderness Society, 81 IBLA 181, 192 (1984); Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981). Such judgments and determinations may not be overcome by expressions of simple disagreement. City of Colorado Springs, 61 IBLA 124 (1982). One challenging a BLM wilderness decision has a particularly heavy burden.

Appellants are critical of the BLM reassessment for the nine units in question, citing "pervasive remand errors." Appellants' Statement of Reasons (SOR) at 6. Appellants are generally critical of the reassessment for ignoring the instructions of this Board on remand, merely restating conclusory negative findings, ignoring appellants' documentation, improperly "breaking-up" units, and failing to document conclusions properly. Appellants also specifically address each unit. Rather than respond to appellants' general arguments at this point, they will be addressed along with the specific arguments as we treat each of the appealed units separately.

Newfoundland Mountains (UT-020-037)

In its decision of November 14, 1980, BLM denied WSA status to the Newfoundland Mountains unit because it found that outstanding opportunities for solitude or a primitive and unconfined type of recreation were lacking. The size and naturalness of the unit were not in dispute. We remanded this unit for reassessment because we found error in BLM's assessment of its outstanding opportunities. Specifically, we found: That the long and narrow shape of this 23,266-acre unit did not preclude it from having outstanding opportunities for solitude; that the impact of military overflights had been inconsistently assessed by BLM from one unit to another; and that a perceived lack of access to the unit had incorrectly influenced BLM's finding that outstanding opportunities for a primitive and unconfined type of recreation were lacking. 72 IBLA at 131-33.

Upon reassessment, BLM's decision of October 14, 1983, again stated that this unit should be denied WSA status because of a lack of outstanding opportunities. Outstanding opportunities for solitude were absent, BLM concluded, because of the unit's size, configuration, and screening. A narrative accompanying BLM's decision described the shape of the unit as 15 miles long and approximately 1 to 4 miles wide with a single exposed ridgeline evident for the entire 15 miles of its length.

Addressing topographic screening, BLM's narrative stated that interior or secondary canyons do not exist within the unit and that the unit's vertical rock faces do little to provide angular screening or break up one's line of sight. Vegetative screening in the northernmost 3 miles of the unit was said to consist of scattered juniper trees with an understory of sage and associated grasses; the central 6 miles were said to contain these same varieties, although the juniper are few and spotty; and the southernmost 6 miles were described as treeless and dominated by sage, shadscale, halogeton, and grasses.

Outside sights and sounds within the unit are a daily occurrence, the narrative stated, because Air Force staging areas and approaches (often below 100 feet) to target grids in the Grassy Mountains surround the unit. Unlike its intensive inventory report of 1980, BLM's reassessment narrative made no

reference to a letter of Major General John J. Murphy, dated January 9, 1980, describing the use of the airspace above the unit. See Utah Wilderness I, 72 IBLA at 131.

Recreation opportunities were not considered to be outstanding by BLM because these opportunities were found to be limited by the unit's short, straight canyons, its open, unscreened slopes, and the short distances from mountain crest to unit boundaries. Hiking and sightseeing are less than outstanding, the narrative stated, because of the monotony of the terrain and the fact that most use would be limited to a single day. The lack of physical and legal access restricts potential users from enjoying what opportunities may exist, BLM concluded.

In setting forth its rationale for rejection of unit UT-020-037, BLM restated part of the above analysis and mentioned also that the vistas obtained from the unit's 7,600-foot elevation did not promote or qualify the unit for a WSA designation.

Appellants criticize BLM's reassessment as a hasty review that produced a proposal virtually unchanged in language from the original 1980 final decision document. BLM's reassessment still speaks of the unit's narrow configuration, appellants observe, and offers no justification of how this fact impacts solitude. They regard BLM's discussion of "size, configuration, and topographic and vegetative screening factors" as cosmetic language and state that no additional data about vegetative screening has been set forth in the reassessment. Many of appellants' charges focus on a "proposed remand document" whose statements were offered by BLM for public comment and later altered in the final reassessment document. Access concerns are again considered by BLM, appellants contend, to support a finding that outstanding opportunities for a primitive and unconfined type of recreation are absent.

We perceive no error in BLM's reassessment of the opportunities for solitude within the unit. Organic Act Directive (OAD) 78-61, Change 3, at pages 3-4, states that BLM should consider the interrelationship between size, screening, configuration, and other factors that influence solitude in determining whether a unit possesses outstanding opportunities for solitude. BLM's mention of the unit's narrowness is a reference to its configuration. So long as BLM considers the interrelationship of all factors influencing solitude, as it appears to have done during reassessment, the mere mention of a single factor does not indicate error. Nor does BLM's alleged failure to provide additional data about vegetative screening constitute error. The purpose of our remand in Utah Wilderness I was to effect a reassessment of available data in light of the statute and the OAD's. The reference in BLM's Decision on Remand to military overflights is not objectionable where the decision contains an independent basis for concluding that outstanding opportunities for solitude are lacking.

Similarly, we perceive no error in BLM's reassessment of the opportunities for a primitive and unconfined type of recreation within the unit. An adequate basis for BLM's negative conclusion is set forth in the reassessment. Having concluded that outstanding opportunities for recreation were lacking, BLM then noted that the unit's lack of access restricts potential users from enjoying what opportunities may exist. Contrary to its original 1980 decision, the lack of access available to the unit does not appear to have been a factor in this conclusion. As we stated at 72 IBLA 132, OAD 78-61, Change 3,

at page 4, provides that the absence of a trail system or convenient access is not a valid basis for concluding that an outstanding opportunity for primitive and unconfined recreation does not exist. BLM's decision to drop this unit from further study is affirmed.

Dugway Mountains (UT-020-129)

The Dugway Mountains inventory unit was denied WSA status by BLM because it found the unit to lack outstanding opportunities for solitude or a primitive and unconfined type of recreation. We ordered a remand of 18,000 acres of this unit for the following reasons: BLM appeared to rely principally on military overflights and a lack of screening to support its negative finding regarding solitude; recreation opportunities were found lacking because of the unit's size and its lack of water, topographic diversity, or challenge; and the record was unclear whether BLM had considered the possibility that the unit possessed a diversity of recreational opportunities sufficient to qualify the unit as a WSA.

Following reassessment, BLM again concluded that the unit did not possess outstanding opportunities. Addressing solitude, BLM described the Dugway Mountains as characterized by steep, rocky terrain enclosing broad, relatively unscreened valleys. Its slopes are thinly vegetated, BLM stated, and its natural screening is poorly defined. Unit size and configuration were not found to enhance opportunities for solitude in any significant manner. In explaining the rationale for its decision, BLM further stated that one's opportunities to avoid the sights and sounds or evidence of others is severely restricted by poor screening, military presence, unit configuration, and the lack of spatial separation. With respect to military overflights, BLM acknowledged the validity of comments "insofar as 'permanent impacts' are concerned." These comments stated that overflights should not be considered because they are not permanent impacts and will be terminated at some time in the future.

Addressing recreation, BLM found that opportunities for hiking, backpacking, hunting, horseback riding, dry camping, rock hounding, photography, and sightseeing were available within the unit. Unit size, topographic diversity, or challenge were said to restrict hiking and backpacking experiences to a day or two. Dry camping might be similarly short-lived, BLM declared, unless done in conjunction with other uses or supplemental values. Upland game hunting was described as "fair," and rock hounding was said to be available at the sites of old mining camps. BLM set forth its rationale for decision in this way: "The diversity of recreational opportunities were [sic] considered, and though available to some degree, none were [sic] of such quality or significance that better opportunities could not be found in a number of adjacent ranges. The combined diversity of opportunities is far less than outstanding" (Decision on Remand, Dugway Mountains at 3).

In its reassessment of solitude opportunities, BLM has considered the unit's size, configuration, and screening, both vegetative and topographic. This analysis is consistent with OAD 78-61, Change 3, set forth above. Military overflights, as appellants themselves acknowledge, appear not to have been relied upon by BLM in its solitude analysis. This is in contrast to BLM's earlier analysis wherein it considered this information and appeared to apply it inconsistently from unit to unit. We hold that BLM's reassessment of solitude is consistent with the statute and OAD's.

Gone from BLM's reassessment of recreation is any direct mention of a lack of water within the unit. Our earlier remand was in part prompted by BLM's consideration of this factor, contrary to the OAD. At page 4, OAD 78-61, Change 3, provides, "The absence of water in a unit is not a valid basis for concluding that an outstanding primitive recreation opportunity does not exist."

Challenge has once again been considered by BLM in assessing recreation possibilities. No error is apparent in this action, however, because challenge and risk are acknowledged by the OAD to be appropriate considerations. While appropriate, neither challenge nor risk is necessary in order to conclude that a unit possesses outstanding opportunities for a primitive and unconfined type of recreation.

Even though a unit possesses no single outstanding recreation activity, the presence of a diversity of recreation activities may qualify a unit for further study. One reason for our prior decision was our inability to determine whether BLM considered the diversity of activities in the unit. BLM's reassessment indicates that diversity has been considered and found to be insufficient to support a finding that outstanding opportunities for a primitive and unconfined type of recreation exist in the unit. Appellants' arguments on appeal do not support a reversal of this finding. BLM's decision to drop this unit from further study is affirmed.

Horse Spring Canyon (UT-040-075)

Like other units discussed thus far, the Horse Spring Canyon unit failed to receive WSA status because BLM found that it lacked outstanding opportunities for either solitude or a primitive and unconfined type of recreation. A natural area of unspecified acreage was found by BLM in its original inventory. Upon reassessment, the size of the natural area has been fixed by BLM. This acreage figure and the unit's opportunities for solitude and recreation are the focus of this appeal.

In Utah Wilderness I we remanded this unit for reassessment because BLM failed to consider factors other than screening in assessing the unit's opportunities for solitude. Recreation opportunities were incorrectly assessed, we held, because BLM failed to consider whether the diversity of recreation activities might qualify the area as one with outstanding opportunities for a primitive and unconfined type of recreation. In addition, we found that certain supplemental values of a geological or archaeological nature should have been regarded as a source of recreation opportunities.

BLM found in its October 14, 1983, decision that 22,086 acres from a unit of 32,203 acres satisfied the naturalness criterion. Appellants object to this finding and contend that at least 30,000 acres within the unit possess naturalness. This larger figure, appellants contend, should have been reassessed for outstanding opportunities.

BLM's intensive inventory files contain the following description of impacts within the unit:

The majority of the unit appears to have been affected primarily by the forces of nature. As indicated in the situation

evaluation, most of the intrusions are located near the boundaries of the unit.

In the Little Desert area, there are two roads, several ways, a powerline, two fences, and two corrals. The cumulative effect of these intrusions is a significant impact on naturalness. Ways in Mitchell Canyon and Coal Bed Canyon are substantially noticeable * * *. Portions of these ways in the bottoms of the canyons have been washed out, but enough evidence remains for them to be noticeable.

In Little Valley, there is a way, a seeding, a fence, and three reservoirs. The cumulative impact is substantially noticeable and intrudes upon naturalness.

In the southern portion of the unit, ways in Cherry Flat and Trap Canyon are substantially noticeable * * *.

Portions of the Upper Valley Oil Field are within the unit. Impacts include three roads, two powerlines, and active and inactive well sites * * *.

In our decision of April 18, 1983, we stated that the record supported BLM's findings concerning the presence of substantially noticeable impacts in the unit. This issue was not opened for reassessment, and BLM's conclusions in this regard are final.

To remove substantially noticeable impacts from the area, BLM altered unit boundaries to remove cumulative impacts in the Little Desert area and also in the Little Valley area. Oil-related impacts in the southermost portion of the unit have similarly been removed. All of the impacts in these three areas had been located near the perimeter of the inventory unit. The acreage excluded from reassessment in these three areas is roughly 3,800 acres.

By far the largest area to be removed from reassessment is the land north of the Mitchell Canyon way and south of the Little Desert impacts. BLM appears to have cherrystemmed this substantially noticeable way and in so doing has bisected the unit. Apparently BLM's October 14, 1983, decision spoke only to the area south of this cherrystem.

With respect to BLM's outstanding opportunities conclusions in its Decision on Remand, appellants charge that BLM's consideration of solitude opportunities lacks an analysis of the interrelationship of size, configuration, screening, and other factors. BLM is also charged with making improper comparisons between the screening available in this unit and that in other unidentified places. Screening can be inferior, appellants charge, and yet the interrelationship of all elements might still provide an outstanding opportunity for solitude.

With respect to recreation, appellants contend that BLM incorrectly considered supplemental features to be of value only if they create a demand for sightseeing. Moreover, such features were wrongly evaluated in appellants' view, because BLM considered them separately and independently from

all others. Appellants further charge that despite the Board's instruction to consider the diversity of recreation available, BLM has failed to do so.

Our review of BLM's decision of October 14, 1983, reveals that BLM did consider the interrelationship of all factors in reassessing solitude. Indeed, the opening sentence in its discussion of solitude reads, "Upon reassessment, the interrelationship between size, screening, configuration, and other factors that influence solitude was considered." Thereafter, BLM discussed how the best vegetative screening within the unit is inferior to other screening at the same elevation in the immediate region. Topographic screening in the canyons, BLM stated, is decided inferior to many canyons in an area noted for its canyon landscapes. Size and unit configuration factors, although present, do not contribute to solitude opportunities, BLM held.

BLM's use of comparisons in evaluating solitude opportunities within the unit was not error, contrary to appellants' charge. In ASARCO, Inc., 64 IBLA 50 (1982), the Board quoted with approval from Judge Stuebing's concurring opinion in Committee for Idaho's High Desert, 62 IBLA 319, 326 (1982): "In order to attribute 'outstanding' opportunities, values or characteristics to land, that land must be compared with other lands, as the term 'outstanding' is necessarily comparative in its concept." (Emphasis in original.) We discern no error in BLM's reassessment of solitude opportunities within the remanded area.

In reassessing for recreation, BLM considered whether supplemental values, such as geological or archaeological features, provided outstanding opportunities for sightseeing or photography. It concluded that the archaeological sites in the unit did not possess sightseeing value and that none of the sights supported recreational activities. In addition, the petrified wood and fossil sights within the unit were found not to contribute to sightseeing for geological features. As for appellants' contention that BLM incorrectly evaluated each site separately and independently from all others, the Wilderness Inventory Handbook (WIH) offers no support for this argument. Therein at page 14, the WIH states: "An area may possess outstanding opportunities for a primitive and unconfined type of recreation either through diversity in the number of primitive and unconfined recreational activities possible in the inventory unit or the outstanding quality of one opportunity." (Emphasis supplied.) In contrast to its 1980 assessment of recreation, BLM on remand considered whether the diversity of recreational activities in the unit satisfied the requirement for outstanding opportunities. It concluded in the negative. Appellants have failed to persuade us that BLM's reassessment of the remanded area was done incorrectly.

We affirm BLM's October 14, 1983, decision to drop the area south of the Mitchell Canyon Way from further wilderness consideration. While that final decision did not specifically address the natural area north of the Mitchell Canyon Way, we find that no useful purpose would be served by remanding to require such an assessment because our review of the entire record indicates that on remand BLM, in fact, reassessed outstanding opportunities for the entire remanded unit. This finding is based principally on the "Summary, Recommendation, and Rationale Wilderness Intensive Inventory" for this unit prepared by Kenneth Knowles on July 7, 1983. Knowles recommended that the 32,203-acre area not be designated as a WSA. He stated,

"Further evaluation of the 32,203 acre Horse Spring unit again indicates that this unit does not possess outstanding opportunities for solitude or a primitive and unconfined recreation experience."

Carcass Canyon (UT-040-076)

This unit contains 76,410 acres of which 46,711 acres were designated as a WSA. In Utah Wilderness I appellants sought review of 12,180 of the 29,699 excluded acres. We set aside the BLM decision and remanded this acreage to BLM, stating:

BLM's explanation of the elimination of the acreage in question was based on its conclusion that outstanding opportunities were not available in that area. Appellants have established, however, that BLM improperly assessed the opportunities for solitude in the appealed area because of its narrow focus on the availability of screening. BLM equated outstanding screening with outstanding opportunities for solitude. Reassessment of the solitude criterion based on the interrelationship of size, screening, configuration, and other factors could result in a changed determination. Therefore, we set aside the BLM decision and remand this unit to BLM for reassessment of the solitude criterion as to the acreage appealed.

72 IBLA at 140.

On remand BLM undertook a reassessment of the 12,180 acres and concluded that no outstanding opportunities existed in the remanded area taking into consideration the interrelationship of size, screening, configuration, and other factors. With this conclusion, appellants take exception.

Appellants complain that BLM actually failed to undertake an interrelationship analysis. The Board's decision is mischaracterized, appellants assert, because BLM stated that, "IBLA found that * * * an outstanding screening solitude factor did not exist" (Decision on Remand, Carcass Canyon at 1). BLM's reassessment did not analyze the remanded acreage as a part of the WSA, but as four separate areas of approximately 500, 1,000, 9,000, and 1,800 acres, appellants contend. Further, appellants allege that BL, has not provided any support for the BLM Director's exception which was utilized to delete the acreage in question.

In Utah Wilderness I, 72 IBLA at 138, note 6, we stated:

6/ Appellants have challenged the Director's exception approval process with special attention given to the March 1980 exception approval for seven other units in this appeal (SOR at 44-37). See discussion infra, under Mud Spring Canyon Unit (Ut-040-077). Appellants did not specifically question in their Statement of Reasons the granting of the exception for this unit. we will review the record, however, to determine if it supports the action taken by BLM.

Our previous review resulted in our conclusion that BLM improperly assessed the solitude criterion in the appealed area, and we remanded for the limited purpose of reassessment of that acreage. BLM completed its assessment and concluded in its October 14, 1983, decision that "[n]o outstanding opportunity for solitude was identified in the remanded area as a whole during the reassessment based upon the interrelationship of size, screening, configuration and other factors." The record supports this conclusion and such a conclusion, in turn, provides the basis for the utilization of the Director's exception to delete this acreage.

Appellants also complain that BLM made no attempt to assess scenic vistas in this unit. In our remand of the acreage in this unit we stated that BLM "may consider scenic vistas as another factor in its assessment equation." 72 IBLA at 139. We intended by our statement to allow BLM to exercise its discretion in consideration of scenic vistas. See New Mexico Natural History Institute, 78 IBLA 133, 137 (1983). Clearly, whether or not scenic vistas are of a nature that would enhance solitude opportunities is a matter for subjective evaluation by BLM wilderness personnel. The conclusion must be that BLM found that scenic vistas were not of such a quality, when considered with all other factors, as to support a finding of an outstanding opportunity for solitude in the remanded acreage. We find no error. We affirm BLM's decision to drop the 12,180 acres from WSA consideration.

Mud Spring Canyon (UT-040-077)

In our earlier decision we found a lack of support in the record for BLM's conclusions on the outstanding opportunities criterion. We remanded the appealed acreage (18,065 acres) to allow BLM to reassess outstanding opportunities for solitude and a primitive and unconfined type of recreation for that acreage.

Upon reassessment BLM concluded in its October 14, 1983, decision that the acreage should be dropped from WSA consideration. BLM identified no outstanding opportunities for solitude or for a primitive and unconfined type of recreation during reassessment for the acreage in question. The outstanding opportunities summary in the decision stated:

SOLITUDE: Within the appealed area, BLM reconsidered the interrelationship between size, screening, configuration, and other factors that influence solitude. Vegetation is sparse or low growing. Topographic screening is similarly undistinguished. Vegetative and topographic screening in combination with the size and configuration of the unit are not sufficient in the appealed area, either individually or in combination, to provide outstanding opportunities for solitude. The size and configuration factors, although present, do not contribute significantly to the opportunities for solitude. The opportunity for avoiding the sights, sounds, or evidence of other people in the appealed area is clearly not outstanding. The addition of the 18,065 acres to the Mud Spring Canyon WSA would not increase the opportunity for solitude within the existing WSA. This is due to the fact that the remanded area is substantially inferior in quality and the potential of using it to obtain the characteristic of solitude is quite low.

PRIMITIVE AND UNCONFINED RECREATION: Reassessment determined the opportunity for primitive and unconfined recreation within the acreage under appeal is not outstanding. Within the WSA, the recreation opportunity is outstanding because of diversity of activities. There are nine activities that contribute to diversity in the WSA. They are hiking, backpacking, horseback riding, camping, hunting, rock climbing, sightseeing for geological features, sightseeing for botanical features, and photography activities. The acreage under appeal contains some opportunities for hiking and hunting, both of low quality, and thus does not exhibit outstanding opportunities due to the quality or diversity of activities. The appellants' documents identified exploring, snowshoeing, and cross country skiing as activities contributing to diversity in the appealed area. Review of weather records show snow cover in the appealed area is not sufficient to support cross country skiing or snowshoeing. Reassessment of the appealed area did not disclose any features which would make exploring a recreational use.

No individual opportunities of outstanding quality are present within the appealed acreage. None of the specific natural features that provide outstanding opportunities within the WSA are present within the appealed area. Exclusion of the appealed area from the WSA does not lessen the quality of these features within the WSA.

(Decision on Remand, Mud Springs Canyon at 2.)

Appellants attack the BLM reassessment as merely a rewording of its previous conclusion. They criticize BLM's final remand decision as conclusory and inadequate with regard to the interrelationship analysis. Counsel for BLM correctly points out that appellants' criticism of the final remand decision as conclusory is an apt description, since that decision was intended to be a summary decision document. He further asserts that record documents such as the Technical Report which is dated June 24, 1983, and the staff analysis signed by Kenneth Knowles on July 7, 1983, provide support for the conclusions in the final decision. We agree. Review of the record indicates that BLM undertook an analysis of the interrelationship of factors. Appellants' disagreement with that analysis and the resultant conclusions cannot overcome the deference we accord to BLM in its wilderness determinations. See Mitchell Energy Corp., 68 IBLA 219 (1982); Richard J. Leaumont, *supra*.

In Utah Wilderness I, we found inadequate justification for the Director's exception used by BLM for this unit. 72 IBLA at 143. Appellants argue that on remand BLM failed to provide any justification and, in fact, appears to have abandoned the exception as a basis for its action. Contrary to this argument, we find that, as directed by the Board, BLM conducted a reassessment of the outstanding opportunities criterion and the record of this reassessment provides support for the exception. The staff analysis signed by Kenneth Knowles on July 7, 1983, contains an analysis of solitude and recreation and recommends that "[t]he Director's Exception granted by Memorandum of March 13, 1980, should be exercised to delete this acreage from further review."

Appellants also charge that BLM ignored a finding by BLM staff member Ken Mahoney that outstanding opportunities for recreation existed "throughout most of the natural area." In our earlier decision we stated that such a finding "would have supported inclusion of all of the natural area in the unit." 72 IBLA at 143. Appellants assert that BLM failed to address "this crucial issue" in its reassessment (SOR at 37). The statement in our earlier decision was made in the context of a discussion of an argument that BLM had failed to document staff disagreement. We found that there was no failure to document; rather we found "inadequate justification for the exception." 72 IBLA at 143. Thus, on remand we sought to have BLM reconsider all the factors relating to its conclusion on recreation opportunities and to document fully the conclusion for whatever result it reached. This it has done.

We affirm BLM's decision to drop the remanded acreage from WSA consideration.

Central Wah Wah Range (UT-040-204B)

This unit contains 37,238 acres, all of which was remanded by the Board for reassessment by BLM of the solitude criterion. We found that the previous record did not adequately support BLM's conclusion on solitude because of evidence that BLM failed to consider the size of the unit and, thus, the interrelationship of factors affecting solitude. 72 IBLA at 148.

In its October 14, 1983, reassessment decision BLM concluded that the unit lacked outstanding opportunities for solitude. In its decision BLM stated that it considered the interrelationship of size, configuration, screening, and other factors that might influence solitude. It found that the interrelationship of all factors did not combine to offer outstanding opportunities for solitude. In this regard it stated in its decision:

The reassessment supports the original inventory findings about the interrelationship of the solitude factors. The unit is about twice as long on its north-south axis as it is wide. The area is confined to an extremely narrow ridge running north and south with steep slopes and shallow lateral canyons. The southern one-third of the unit exhibits a wider area of steep slopes and somewhat deeper canyons, none of which are entrenched. Small forest patches occur at the head of some drainages but are not dense or of sufficient size to provide substantial screening. These forest patches are sparse and discontinuous throughout the area. Riparian vegetation is not present in the lateral canyon bottoms.

Topographic screening does not add to the opportunities for solitude as the unit is almost entirely steep slopes sloping east and west from a narrow ridgetop; topographic screening is poor to fair. There are no prominent peaks, and the lateral canyons are shallow and exhibit few meanders. Some sites at the head of canyons come together in a complementary fashion to support some vegetation and topography screening. However, these sites are localized and discontinuous. While they do contribute to the element of solitude, the situation is by no means superior to others of its kind and cannot be distinguished as outstanding.

In considering interrelationship of size and other solitude factors, the configuration [and] aspect of this unit diminishes the contribution of size. The unit is about seven miles wide at its widest point and is about 4-1/2 miles wide at the northern end. Since the unit contains essentially east- and west-facing slopes with an extremely narrow ridge in the middle, the effect of size substantially lessens. Both the east and west boundaries of the unit are visible from the ridgetop. The interrelationship of size to other factors of solitude in this unit is marginal.

(Remand Decision, Central Wah Wah at 2.)

Appellants take issue with BLM's reassessment, characterizing it as an "after-the-fact editing job" (SOR at 40). ^{4/} We disagree. BLM undertook a reassessment of this unit. It found that the topographic relief and vegetative screening, coupled with the size and configuration of this unit, failed to provide outstanding opportunities for solitude.

We find that appellants' arguments concerning the reassessment, rather than establishing error of law or fact, merely represent a difference of opinion. Clearly, appellants believe that the unit contains outstanding opportunities for solitude, and they submit affidavits and photographs in support of that position. However, they have not shown that BLM's analysis was improper; they have merely shown that reasonable people can differ.

We affirm BLM's decision to drop this unit from consideration as a WSA.
Mt. Ellen/Blue Hills (UT-050-238)

This unit originally contained 156,102 acres of which 58,480 acres were designated as a WSA. In our earlier decision we remanded approximately 20,000 of the deleted acres for reassessment by BLM of the opportunities for solitude and a primitive and unconfined recreation. Those areas were described as South Caineville Mesa, Wildcat Mesa, and Thompson Mesa. The areas had been deleted pursuant to a Director's exception.

Regarding solitude, we found that appellants had pointed out physical factors which the record did not indicate were considered by BLM. We stated that in accordance with OAD 78-61, Change 3, at page 4, BLM should give consideration to the interrelationship between size, screening, configuration, and other factors that influence solitude. We also noted a significant lack of documentation in the record to support the Director's exception for this unit which was based on the outstanding opportunities criterion. 72 IBLA at 159.

Concerning recreation opportunities, reassessment was necessary, we found, because of certain errors in the record. BLM had observed that access provided by various ways limited recreational opportunities. We disagreed,

^{4/} Pine Grove Associates was granted intervention by Board order dated May 18, 1984. It filed a statement in support of BLM's decision on this unit arguing that appellants failed to provide persuasive evidence that BLM erred in its determination. Pine Grove Associates characterizes appellants' contentions as little more than simple disagreement with BLM's conclusions.

stating that "the fact that there is access should not dictate whether outstanding opportunities are available in the absence of evidence that access in some way interferes with the opportunities for recreation." 72 IBLA at 160.

Further, opportunities for rock climbing had apparently been improperly discounted. Regarding archaeological features, we found that BLM had erroneously concluded that since opportunities regarding such features were limited to observation they could not be outstanding. We stated that "[s]ightseeing for archaeological features is comparable to sightseeing for botanical, zoological, or geological features, all of which are listed in the WIH at page 13 as examples of primitive and unconfined types of recreation." 72 IBLA at 160.

Following remand BLM undertook reassessment of this unit. ^{5/} In its October 14, 1983, decision BLM found that opportunities for solitude and a primitive and unconfined recreation were less than outstanding on the three mesas, and it concluded that its original decision to drop this acreage from WSA consideration was correct.

Both appellants and appellant Kincaid sought review of the decision to drop the acreage in question. Initially, appellants attack the Hunt Staff Report, stating that staff disagreement is evident therein and citing the following sentence: "The majority of the evaluation team felt that the opportunities for solitude were less than outstanding with respect to South Caineville Mesa." Such disagreement should have been publicly reported and analyzed, appellants claim. We have held that documentation of such disagreement is not required. In Utah Wilderness I, supra, we stated at page 179:

Thus, the documentation guideline [OAD 78-61, Change 3, at page 1] is directed to differences in recommendations. The field notes in question represent conclusions based on observation by one BLM staff team. The final recommendation obviously represents

^{5/} In a June 23, 1983, staff report authored by Herbert W. Hunt, Richfield District Wilderness Coordinator (Hunt Staff Report), the reassessment process was described as follows for those units in the Richfield District Office:

"In order to comply with IBLA Decision #81-648, a District Evaluation Team was assigned the task of re-assessing wilderness characteristics in each of three Wilderness Inventory Units (#UT-050-238, #UT-050-241, and #UT-050-248). Members of the evaluation team were Larry Sip, Area Manager, HMRA; Herbert W. Hunt, Wilderness Coordinator; Ed Bovy, Outdoor Recreation Planner; Larry Gearhart, Soil Conservationist. This re-assessment process involved several steps:

"1) An initial team meeting was held at which time the wilderness inventory process was discussed. Guidances, including the Wilderness Inventory Handbook and OAD 78-61, Change 3, were reviewed; and previous IBLA decisions related to the Wilderness Inventory were discussed.

"2) The evaluation team made field trips to each of the remanded units, for on-site re-assessments and to take photographs.

"3) The evaluation team met again to review field notes, view photographs, and develop recommendations and rationale."

a consensus opinion based on observations by a number of staff members. Personal disagreement among observers is to be expected; documentation of that disagreement was not required. [Emphasis added.]

In this case the reassessment team resolved differences of opinion prior to recommendation. 6/

[2] Appellants and appellant Kincaid argue that BLM has failed to provide justification for approval of the Director's exception and that it failed properly to undertake the reassessment of outstanding opportunities directed by the Board. Our review of the record for this unit reveals the following. The Hunt Staff Report details the on-site investigation by the evaluation team. That report states that the following areas were reassessed: South Caineville Mesa containing about 4,000 acres of public land; Thompson Mesa covering slightly less than 5,000 acres; and Wildcat Mesa covering about 5,000 acres. These areas are designated as the "Remanded Areas" on map 1A accompanying that report. This reassessment, however, failed to consider the approximately 6,000 remanded acres surrounding and connecting the mesas. (See Exh. DD, Kincaid Statement of Reasons (Kincaid SOR)). Our earlier decision remanded 20,000 acres for reassessment. Although we named the three mesas, they were intended to be descriptive of the general areas to be reassessed. Yet, on remand BLM reexamined each mesa top and separately reassessed the wilderness characteristics of each mesa top without a consideration of other remanded acreage. 7/ This was error.

Our further review of the record discloses that the improper reassessment caused BLM to reach an incorrect conclusion for this unit. Such a disclosure compels reversal of the BLM decision. Utah Wilderness I, 72 IBLA at 129. Appellant Kincaid has produced substantial documentation to establish that the remanded area which was not reassessed in the Hunt Staff Report contains acreage which is essentially the same as that contained in the WSA. This evidence is important because the basis for the Director's exception used for this unit was that this unit contained a "high degree of character change" within the unit in relation to the outstanding opportunities criterion. (BLM State Office Memorandum dated Mar. 6, 1980). The BLM Utah State Office announced this exception, stating that the "boundaries of this unit were adjusted to include only that portion found to possess outstanding opportunities for solitude and a primitive and unconfined type of recreation because of extreme differences in both topography and vegetative cover." (Exh. BB, Kincaid SOR; emphasis added).

6/ Despite the fact that staff disagreement was not required to be documented, we note that the Hunt Staff Report forthrightly described when disagreement arose, how it was resolved (South Caineville Mesa discussion at 2), and the results of failure to resolve (doubt resolved in favor of adding acreage to Fiddler Butte WSA at 5).

7/ The Decision on Remand states that "[a]ll opportunities for both solitude and recreation were reevaluated, interrelationships between components were considered, and the areas in question were evaluated on their own merits as well as within the context of the WSA as a whole" (Mt. Ellen/Blue Hills Unit at 3). The record fails to disclose that such a reevaluation took place. In fact, the record evidence expressly contradicts such an evaluation.

Therefore, even though the evaluation team found no outstanding opportunities on the mesa tops, the reassessment has failed to provide justification for the Director's exception since the record is clear that a substantial portion of the remanded acreage is of the same character as that within the WSA boundaries. Presumptively, such lands contain the same quality of opportunities as are available in the WSA lands. That being the case, we find the remanded acreage contains outstanding opportunities. Outstanding opportunities need not exist in all parts of the unit. OAD 78-61, Change 3, at 3. All the remanded acreage should be included in the Mt. Ellen/Blue Hills WSA. 8/ The BLM decision appealed from is reversed as to this unit.

Fiddler Butte (UT-050-241)

The Fiddler Butte unit contains 101,310 acres. BLM divided the unit into two subunits during the intensive inventory. The western subunit (UT-050-241A) contained 56,000 acres of which 27,000 acres were designated as a WSA. 9/ In that subunit 9,000 acres were deleted for lack of naturalness and 20,000 acres were deleted pursuant to a Director's exception. All 45,000 acres in the eastern subunit (UT-050-241B) were eliminated for lack of outstanding opportunities.

8/ Appellant Kincaid alleges that the western WSA boundary separating the WSA from the remanded acreage represents an attempt by BLM to eliminate resource conflicts from acreage being considered for wilderness study status. He submits a considerable amount of documentation in support of that claim (Exhs. FF, GG, X (overlay 4); Kincaid SOR). Resource conflicts are properly the subject of analysis during the study phase. In Union Oil Company (On Reconsideration), 58 IBLA 166, 170 (1981), the Board stated:

"We think it is of particular importance that the distinctions between the nature and aims of the inventory phase, vis-a-vis the study phase, be kept clearly in mind. As the WIH notes, wilderness review involves three distinct phases: (1) inventory, (2) study, and (3) reporting. The inventory phase was designed to determine and demarcate those areas of the public lands which were possessed of the wilderness criteria established by Congress. Upon the determination that such characteristics were presently existent (or could, in certain circumstances be developed by natural forces or manual means), the areas were to be designated as WSA's, which would then be studied for possible inclusion in the wilderness system.

"During this study phase, BLM would endeavor to analyze each WSA's suitability for wilderness designation in conjunction with the whole range of other public land uses that Congress has authorized. Thus, the mineral potential of any tract would be examined in the study phase to determine the impact that a permanent wilderness designation might have on such values. Moreover, this analysis is not limited to only mineral values, but embraces the full range of public uses, including grazing and recreational use, with an aim to determining the relative merits of a specific parcel's inclusion in the wilderness system. Indeed, the entire purpose of the study phase is the generation of data sufficient to make informed choices between competing claims to the land."

9/ The acreage figures in the text are taken from Utah Wilderness I at 161. BLM's Decision on Remand identifies the unit acreage as 110,270 acres with 26,400 acres having been designated as a WSA prior to the Board's remand. This discrepancy is not explained.

In Utah Wilderness I approximately 62,500 acres were appealed-- approximately 17,500 acres in subunit A and all of subunit B. The Board remanded all the acreage for reassessment and for reconsideration of whether division of the unit into two subunits was proper. 72 IBLA at 163. Specifically, the Board directed BLM to review the 9,000 acres deleted from subunit A, known as the Cedar Point area, because of naturalness impacts. We stated: "The proper course for BLM would have been to exclude, by means of boundary adjustments, those portions of the Cedar Point area where the impact of man was considered to be substantially noticeable." 72 IBLA at 162. We cited a lack of support for the Director's exception as the rationale for remanding the approximately 8,500 acres in the Poison Springs Canyon area for reassessment. 72 IBLA at 162. With regard to subunit B, we found the record showed that certain areas in subunit B exhibited wilderness characteristics and that it was improper to eliminate subunit B from further consideration as a WSA. We directed reassessment of the wilderness characteristics of subunit B.

On remand BLM determined that approximately 35,800 acres within former subunit B should be added to the WSA; that the unit should no longer be subdivided, and that the combined areas east and west of the Dirty Devil River would be known as UT-050-241 totaling 62,500 acres. The Cedar Point area, BLM found, lacked naturalness because of various ways and seismic lines that were substantially noticeable. Poison Springs Canyon was found to lack outstanding opportunities and the remaining acreage in former subunit B was eliminated because it lacked naturalness. Appellants appealed the elimination of all these areas.

We will first consider the Cedar Point area which we remanded to BLM because the record did not support the determination to eliminate those 9,000 acres on the basis of intrusions outside the unit boundaries. The Hunt Staff Report at page 3 stated regarding this area:

This general area of 241A, north and west of the WSA, was reassessed for naturalness. The evaluation team agreed that this portion of the sub-unit is extensively intruded by roads, ways, bladed seismic [sic] lines, drill pads and drill pits as a result of the pre-FLPMA exploration activities, and should be dropped from further review due to lack of naturalness. (See Map 1B and photos B1 through B4). As one team member noted, "the Cedar Point area is literally covered with intrusions". Another stated "the cumulative impacts adversely affect one's perception of naturalness". A third said that roads completely encircle the Cedar Point area". On the IBLA Decision it was stated that BLM referred to intrusions outside the inventory unit in the protest response. The statement was misinterpreted. It actually stated that the Cedar Point Dunes were completely surrounded by intrusions leaving a natural area of less than 5,000 acres. (See Map 1B).

Appellants attack this reevaluation, stating that BLM has incorrectly located many of the intrusions, misrepresented the physical character of the impacts, ignored the pre-/post-FLPMA timing and also ignored the actual

qualitative and cumulative impacts on naturalness. SOR at 53. Appellants' arguments amount to their disagreement with the conclusions reached by BLM regarding the nature of the intrusions and the impact of such intrusions. In such a situation we defer to BLM's judgment. The Wilderness Society, 81 IBLA at 192.

We turn to the Poison Springs Canyon area which was deleted on the basis of a Director's exception. In Utah Wilderness I we stated:

While initially relying on topographic differences, BLM later admitted the similarity of features and apparently relied entirely on the relative "shortness" of canyons in the Poison Springs Canyon. This is insufficient documentation to support the deletion of the 8,500 acres challenged by appellants on appeal. The exception was granted purportedly because of a "high degree of character change within the unit," yet BLM admits the similarity of topographic features between the canyons in the WSA and in the lands excluded. The record lacks an explanation for this important inconsistency.

72 IBLA at 162.

Upon reassessment the area was described as containing 3 short side canyons each less than 1 mile in length and quite wide. It was reported that it would be impossible to avoid others in any of the canyons. The similarity between these canyons and those in the WSA was observed to be limited to basic geological formation and vegetation types. Recreation was found to be limited to short walks in the canyons. Hunt Staff Report at 4. The report contained the following recommendation at page 5:

2. The three side canyons in Poison Springs Canyon do not offer outstanding opportunities for either solitude or primitive unconfined recreation and should be deleted from the inventory unit through the exercise of the Director's Exception granted by Memorandum of March 13, 1980.

BLM's findings on the outstanding opportunities criterion are incorrect, appellants assert. They cite a lack of support for BLM's findings as evidence that a mere "difference of opinion" is not what is involved. We must disagree. On remand a BLM evaluation team visited the area in question. Their observations were incorporated in the Hunt Staff Report. While those observations are to a degree conclusory, they do support the ultimate finding of no outstanding opportunities. That more may have been developed to support the finding, we do not dispute; however, the determination to drop this area does have support in the record. Appellants have failed to establish error. The BLM decision as it relates to Poison Springs Canyon must be affirmed.

In remanding subunit B for reassessment the Board found that "outstanding opportunities in the area east of the dividing line are sufficient, absent one of the three examples on page 3 of OAD 78-61, Change 3, or

an exception from the Director, to qualify all of subunit B as a WSA." 10/ 72 IBLA at 163. The Board directed reassessment of the wilderness characteristics of subunit B.

The Hunt Staff Report on subunit B is limited to a discussion of the outstanding opportunities criterion. The evaluation team recommended that "[a]pproximately 33,000 acres of Sub-unit #241B should be added to the existing WSA (since the evaluation team cannot agree as to the presence of outstanding opportunities on the Block, the determination should be made through the study phase) (See Map 3B)." The Hunt Staff Report contains no explanation of why approximately 12,000 acres were excepted from its WSA recommendation. There is no evidence in the record that any of the examples on page 3 of OAD 78-61, Change 3, are applicable or that a Director's exception was granted. 11/ The BLM remand decision explains, however:

10/ OAD 78-61, Change 3, at page 3, regarding boundary adjustments reads:

"As a general rule, the boundary of a unit is to be determined based on evaluation of the imprints of man within the unit and should not be further constricted on the basis of opportunity for solitude or primitive and unconfined recreation. A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding criterion. Obviously, there must be an outstanding opportunity somewhere in the unit.

"There may be unusual cases where due to configuration it may be appropriate to consider adjusting the boundary based on the outstanding opportunity criterion. There are several examples where this may occur:

"(a) When a narrow finger of roadless land extends outside the bulk of the unit;

"(b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);

"(c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are not permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation.

"The above cases are the only ones in which the boundary may be adjusted on considerations other than imprints of man. Any other exceptions to boundary adjustments must be approved by the Director (430)." (Emphasis in original.)

11/ On page 32 of its answer BLM states:

"[T]he Board did indicate that outstanding opportunities did appear to exist unless one of the three examples on page 3 of OAD 78-61, Change 3, or an exception from the Director applied. BLM applied this exception on the grounds that it found less than outstanding opportunities on those excluded portions of subunit B."

(Emphasis added.) It is unclear to what "exception" the reference is, but, as stated in the text, neither do the examples apply nor was a Director's exception sought. In addition, reference to the Decision on Remand indicates that the area in question was deleted, not through application of an exception, but because of a perceived lack of naturalness.

Although it has been determined that no other portions of former sub-unit 241B have outstanding opportunities for solitude or recreation, Wilderness Inventory Phase Guidance requires that all acreage meeting the naturalness criteria be included in the Study Phase. Therefore, the boundary has been adjusted to exclude only those areas where there are cumulative impacts of roads, ways, seismic lines, and mining activity which adversely impact naturalness. South Hatch Canyon is a four-wheel-drive entrance road to Glen Canyon NRA with portions maintained on a regular basis. All areas north of this road have also been deleted. While south of the road and north of The Block there are active mining claims and several pre-FLPMA roads and ways, some segments of which are substantially noticeable, the area is for the most part in a natural condition.

(Decision on Remand, Fiddler Butte at 3-4.) 12/

Although appellants object to boundary adjustments based on lack of naturalness grounds, our earlier decision contemplated that BLM should examine the wilderness characteristics of subunit B, including reassessment of naturalness.

The question presented is whether approximately 12,000 acres were reasonably excluded on the basis of lack of naturalness. 13/ BLM stated in its remand decision that all areas north of the South Hatch Canyon road had been deleted. BLM stated that this road serves as a four-wheel-drive entrance road to the Glen Canyon National Recreation Area (GCNRA) and that "portions" are maintained on a regular basis.

Appellants disagree with BLM's characterization of the access route as a road and argue that, in any event, it does not justify elimination of approximately 11,500 acres north of South Hatch Canyon. In response to comments made by appellants during the reassessment, BLM stated:

12/ This determination was apparently based in part on a record document dated July 3, 1983, and signed by Herbert W. Hunt. Therein, Hunt stated with regard to naturalness in subunit B:

"There are many pre-FLPMA roads and ways in the northern and southern portions of the sub-unit (totaling approximately 50 miles in length) which were developed to aid in uranium and tar sand exploration or to develop water sources for grazing. Intrusions are concentrated around The Cove and Fiddler Butte. Also, South Hatch Canyon serves as a major four-wheel drive road access to the Sunset Pass entrance to Glen Canyon NRA. The previous inventory incorrectly used North Hatch Canyon as the boundary." This document made no mention of the amount of acreage affected by the described roads and ways.

13/ There is some question over the exact amount of acreage in this area. The Decision on Remand, Fiddler Butte Unit at 1, speaks of an addition of 35,800 acres (of 45,000 acres in former subunit B) to the WSA, but later refers to "the 33,000 acres recommended to be added." *Id.* at 4. All other references in the record are to a recommended area of 33,000 acres. -

Whether or not the vehicle route is always in evidence or receives little use is irrelevant -- the way or road is on GCNRA maps, UTC [?] recreation maps, USGS [United States Geological Survey] maps, has been maintained by mineral companies (let's do a road analysis & document maintenance) and is signed "Sunset Pass Entrance, GCNRA." [14]

The fact that this route is noted as access to the GCNRA is not, in itself, justification for elimination of all acreage north of that route. In fact, the record does not support BLM's characterization in its remand decision of this route as a road.

BLM has adopted the definition of "road" suggested by the legislative history of the Federal Land Policy and Management Act, 43 U.S.C. § 1782 (1982), at H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), wherein it is stated: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." The BLM Photo Log in the case record contains 2 entries describing 2 slides: no. 23 is identified as "South Hatch Canyon way. Some obstacles. Rehabilitation" and no. 24 as "South Hatch Canyon way." Both slides (dated August 1979) depict a route that appears to follow the bottom of a wash area. There is no evidence of mechanical maintenance. The BLM remand decision also states that adjacent to the vehicular route is a pre-FLPMA airstrip which is in the process of natural reclamation but remains substantially noticeable. Appellants dispute this representation, stating that "revegetation is almost complete." SOR at 60. The BLM Photo Log shows the following entry for slide no. 25 -- "Abandoned Land Strip; rehabilitating well." This is the airstrip in question. Examination of the August 1979 slide confirms appellants' allegation that this area is substantially unnoticeable and in 1979 had largely revegetated.

We find that BLM improperly deleted the area north of South Hatch Canyon way. 15

Appellants also complain about approximately 500 acres excluded in the Red Benches/Cove area by cherrystemming. Appellants filed comments during the reassessment period alleging post-FLPMA impacts and the substantially unnoticeable nature of certain impacts. In response to appellants' comments BLM apparently rechecked the area. It stated in its Decision on Remand:

The post-FLPMA reservoirs and way improvements were excluded from considerations of naturalness. Therefore, the entire southeast portion, with the exception of the above-mentioned [mining] road to the small mesa south of the South Block and pre-FLPMA roads in

14/ We were unable to find any evidence in the record of any road analysis or maintenance survey for this road.

15/ We note that the record evidences resource conflicts in this area relating to uranium exploration activities and tar sand development. These considerations, however, are properly the subject for analysis during the study phase. See note 8, supra. - - -

the Cove, which were cherry stemmed out of the WSA, is in a completely natural condition.

Fiddler Butte Unit at 2. We find no error in BLM's reassessment of this area.

In summary, we affirm BLM's decision concerning the Fiddler Butte unit, except as it relates to that area north of the South Hatch Canyon way. The decision is reversed as to that area and remanded for its inclusion as a part of the Fiddler Butte WSA.

Mt. Pennell (UT-050-248)

The Mt. Pennell unit contained 159,650 acres. During the intensive inventory BLM divided this unit into 2 subunits, eliminating all of subunit A (west half) from wilderness consideration and designating 27,300 acres of subunit B (east half) as a WSA.

In Utah Wilderness I, 72 IBLA at 164, the appellants appealed approximately 60,000 acres, all of subunit A, described as Swap Mesa, Swap Canyon, Cave Flat, and Cave Point, and the Muley Creek drainage (approximately 45,000 acres) and 15,000 acres just south of the Mt. Pennell WSA in subunit B. The Board remanded all 60,000 acres for reassessment. In addition, the Board directed BLM to reexamine the entire length of two roads which BLM had utilized as the basis for subdividing the unit.

Following reassessment, BLM adhered to its original position to divide the unit and to delete the 60,000 remanded acres. Both appellants and appellant Kincaid sought review of that decision.

The first issue we will consider is subdivision of the unit. In Utah Wilderness I, 72 IBLA at 166, we stated:

Our review of the record indicates that while there is some support for BLM's conclusion that these are "roads" -- e.g., photographic slides of "Bullfrog Creek Road" -- this support apparently is limited only to certain segments of those "roads." If the entire length of these "roads" has not been improved and maintained by mechanical means to insure relatively regular and continuous use, then those parts not so improved and maintained properly should be classified as "ways." The improved and maintained parts, assuming they begin at the unit boundaries, could be "cherry stemmed." See National Outdoor Coalition, [59 IBLA 291 (1981)] at 296.

Since there is not adequate support in the record for BLM's conclusion concerning these "roads," we must set aside the BLM decision and remand the case. If BLM concludes upon reexamination that the entire length of these "roads" has been improved and maintained by mechanical means to insure relatively regular and continuous use, unit UT-050-248 properly may be divided along such roads.

Upon remand the evaluation team conducted a field examination of the Cave Flat and Bullfrog Creek roads. The Hunt Staff Report at page 7 details the findings:

These two roads penetrate the inventory unit in such a manner that they virtually bisect it. (See map). The appellant questioned whether these were roads or ways. Both are included in the District Transportation Plan as roads that are maintained by BLM. Cave Flat Road is maintained for approximately seven (7) miles and the Bullfrog Creek Road is maintained for approximately nine (9) miles. (See map). Maintenance occurs on an as needed basis, but it is subject to the availability of funds. Both roads are in regular use by livestock operators, BLM for range studies, buffalo and deer hunters, and mining claimants. (See Photos C3 through C10).

After field examination, it is the conclusion of the evaluation team that these two roads, for the lengths indicated on the attached Road/Way Analysis Forms, 16/ do indeed meet the criteria for a road as defined in the Wilderness Inventory Handbook - they both "have been improved and maintained to insure relatively regular and continuous use. 17/

Appellants dispute BLM reexamination of these roads, citing a lack of evidence of maintenance, no indication of field checking, and no information on usage. BLM has failed to demonstrate that the entire length of these roads meets the "road" definition, appellants charge. Appellant Kincaid does not dispute that these routes are, in fact, roads; however, he does disagree with BLM over the road terminus of the Cave Flat Road and, like appellants, over subdivision of the unit. In a September 1, 1983, letter to the Utah State Director, Kincaid expressed these same concerns about the location of and terminus of the Cave Flat Road. 18/ An undated, unsigned "Summary of Comments" in the record summarizes Kincaid's comments concerning the roads as follows:

a) Rationale for why the WSA was improperly subdivided into two subunits

16/ The road/way analysis forms provide the following beginning and ending locations for the Cave Flat Road:

"Sec. 30, T. 32 S., R. 10 E. (NW 1/4)

"Sec. 26, T. 33 S. R. 9 E. (NW 1/4)."

Those descriptions for the Bullfrog Creek Road are:

"Sec. 7, T. 35 S., R. 10 E.

"Sec. 36, T. 33 S. R. 9 E."

17/ The road/way analysis forms have "X" marks in boxes labeled "Graded" and "Machinery."

18/ In that letter he also offered to share certain maps, and ground and aerial photographs he had used to document his conclusions regarding the Mt. Pennell unit. On appeal he asserts that BLM did not accept his offer (Kincaid SOR at 31).

- 1) Roads on Cave Flat mislocated on BLM inventory map
- 2) Terminus of North Road not accurate (actually in the NW 1/4 of section 23 rather than SW 1/4 -- difference of one mile) (verified)
- 3) Contends some routes lead to capped drill sites which are post Flpma (Routes & drill sites were created by Meadowlark farms 1973-1974)
- 4) Contends some ways exist in area which weren't mapped.
- 5) Cave flat Airstrip is post Flpma ([19]74 Aerial photos show it)
- 6) Argues the distance between two dividing roads should be the route that can be traveled by foot & not map miles. [Emphasis in original.]

It is clear that the parentheticals represent BLM's response to Kincaid's comments. Thus, his claim that the road terminus of the Cave Flat (North) Road was not accurate was investigated by BLM. BLM "verified" the terminus as being "in the NW 1/4 of section 23 rather than SW 1/4 -- difference of one mile." The road/way analysis forms, containing the name of Herbert W. Hunt and dated May 8, 1983, identify the terminus as NW 1/4, sec. 26. The map accompanying the Hunt Staff Report indicates that the approximate distance between the road/way analysis form terminus and the verified terminus to be approximately 1 mile. Thus, the Hunt Staff Report finding that the two roads "virtually bisect the unit" was based on a belief, apparently also held in November 1980 at the time of the final intensive inventory decision, that the roads were actually approximately 1 mile closer together than they were later determined to be by BLM. The actual aerial mileage between the termini of the road as located by BLM is approximately 3-1/2 miles (see Exh. I, Kincaid SOR).

Kincaid further argues that BLM's verified location of the NW 1/4 of sec. 23 for the terminus of the Cave Flat Road is error. He asserts that in November 1981 he spent 6 days in the Cave Flat/Bullfrog Creek area exploring and photographing in an attempt to verify the precise location of the roads in question. Rather than ending in the NW 1/4 of sec. 23, the Cave Flat Road terminates, Kincaid contends, one-half mile further north in the center of sec. 14 at an airstrip and at the intersection of the road and three ways (Kincaid SOR at 32). While he provides evidence to support this contention, we need not decide whether the Cave Flat Road terminus is even farther to the north. The reason for this is explained below.

In Utah Wilderness I, 72 IBLA at 166, we requested that BLM reexamine the roads, determine whether such roads could be cherrystemmed, and decide whether subdivision would be proper. The Hunt Staff Report concluded that subdivision was proper because of the virtual bisection of the unit by the

roads. This conclusion, however, was based on an erroneous assumption concerning the terminus of the Cave Flat Road. The final remand decision, although based on BLM's verified road terminus, contains the same conclusion relying again on virtual bisection of the unit.

Once the actual location and termini of the roads were determined, it was incumbent upon BLM to analyze the propriety of subdivision. BLM's rationale for subdivision does not withstand scrutiny. Cherrystemming the roads in question results in over 3 miles of separation between the road termini. Kincaid correctly points out also that aerial separation is not as critical as the actual on-ground topography. In that regard he submits a map showing a user's anticipated experience in the area of subunit A (Exh. S, Kincaid SOR) and alleges that the distance between the roads is much further in foot miles than air miles (Kincaid SOR at 25). Examination of file maps confirms these allegations.

The record does not support a finding that the unit is virtually bisected by the two roads. There is no evidence that the area between the roads represents a possible travel route within the unit such that visitors might be congregated in that area. ^{19/} Therefore, under the circumstances disclosed on remand, the fact that the two roads approach each other from opposite sides of the unit cannot support BLM's action. See Timothy O. Kesinger, 72 IBLA 100, 103 (1983). The consequence of subdividing the unit has been to eliminate 45,000 contested acres in subunit A from wilderness consideration. Upon reassessment BLM has concluded again that this area fails to present outstanding recreation opportunities. Although appellants and appellant Kincaid dispute that assessment, we need not consider any arguments related to the opportunities available in subunit A. The basis for this is our conclusion that the unit was improperly subdivided. Thus, considered as a whole, the Mt. Pennell unit contains outstanding opportunities. Therefore, the approximately 45,000 acres in subunit A should be included as part of the Mt. Pennell WSA since in accordance with OAD 78-61, Change 3, at 3, an outstanding opportunity need not be available in all parts of the unit, but

^{19/} In Utah Wilderness I, 72 IBLA at 176, we stated concerning the Cottonwood Canyon unit (UT-060-100c):

"The mere presence of the State sections does not necessarily justify the conclusion that 'a very congested and narrow boundary area has been created.' Disregarding the State sections, corridors of between 3/4 mile and 1 mile exist between the Coal Canyon WSA and the Sagers Canyon area. Without supporting evidence, these corridors cannot be considered as being very congested and narrow in the face of appellants' uncontested allegation that logical access to the canyons in this area is from the south and the east." (Footnote omitted.)

Our discussion in that case related to a boundary adjustment, undertaken by BLM in accordance with OAD 78-61, Change 3, at 3, which allowed adjustment where "extensive inholdings occur and create a very congested and narrow boundary area." BLM did not apply any of the OAD 78-61, Change 3, at 3, examples to the situation in this case, nor do they appear to apply.

there must be an outstanding opportunity somewhere in the unit. 20/ Utah Wilderness I 72 IBLA at 177.

The other area in the Mt. Pennell unit remanded by the Board is the 15,000 acres south of the WSA in subunit B. This acreage was eliminated pursuant to a Director's exception for which we found a "complete lack of explanation." 72 IBLA at 164. The granting of the exception was conditioned upon a full discussion and documentation of the rationale for the deletion. In Utah Wilderness I, appellants alleged that the deleted acreage offered outstanding opportunities for solitude due to the extremely rugged topography and also outstanding opportunities for a primitive and unconfined recreation. In addition, appellants alleged that the 15,000 acres contained the Mancos shale badlands and their elimination degraded the diversity of life zones within the WSA. 72 IBLA at 165. We remanded for reassessment of the outstanding opportunities criterion in this area.

The Hunt Staff Report at page 5 includes the following discussion:

AREA SOUTH OF WSA- This area includes approximately 15,000 acres immediately south and adjacent to the WSA. (See Map 1C). 15,000 acres includes almost all of the public lands between the Bullfrog Creek Road and Cow Flat-Coal Bed Mesa roads. There are a few thousand acres of Mancos shale badlands adjacent to No Man Mesa. The greater portion of those badlands are within the WSA. Those outside the WSA are flatter and less sharply defined. The balance of this 15,000 acres consists of large flats separated by intermittent drainages like Mud Creek, Pennell Creek, and Saleratus Wash. Topographic variation is minimal and vegetation is not of screening height, providing little opportunity for finding solitude. (See Photos C1, C2).

The evaluation team agreed unanimously that outstanding opportunities for solitude did not exist here. * * *

As to recreational opportunities, they would be limited to hiking, backpacking, and horseback riding. The team did not think any of these could be rated higher than poor to very common.

The Hunt Staff Report recommended that the Director's exception be exercised to delete this acreage. Appellants contend that because no mention is made of the Director's exception in BLM's final remand decision, BLM may no longer

20/ There is some dispute in the record whether the route in Swap Canyon is, in fact, a road. BLM has identified it as such. Appellants have taken exception to that determination. Because BLM was eliminating the acreage in subunit A on other grounds, the record does not evidence whether the Swap Canyon route has been improved and maintained by mechanical means to insure relatively regular and continuous use. If that route, or any other identified "roads" fit the road definition, they should be cherry-stemmed.

rely on this exception procedure. Regardless of whether the exception is cited in that decision, it is clear that BLM's reassessment of outstanding opportunities resulted in a determination by BLM that would support such an exception -- i.e., lack of outstanding opportunities. The fact that appellants disagree with the results of that reassessment is not sufficient to overcome that determination. See The Wilderness Society, 81 IBLA 181 (1984).

Appellant Kincaid argues that the Director's exception for this area is not supported by the record because the Director placed certain conditions on approval of the exception, 21/ and BLM has failed to satisfy those conditions in two instances. First, supplemental values have been eliminated from the WSA, Kincaid asserts. Second, he claims that deletion has resulted in a reduction in the overall size of the unit in a way that detracts from the extent or quality of opportunities.

Regarding supplemental values, Kincaid contends that the exception was used to eliminate mancos shale badlands which were identified at one time (April 1981) by BLM as representing one of the four life zones in the Mt. Pennell unit. The availability of these life zones in one unit was listed by BLM as a supplemental value.

Kincaid admits that not all such badlands were eliminated, some in the vicinity of No Man Mesa being included in the WSA. He argues, however, that only about 300 acres of several thousand acres of those badlands were included in the WSA. There is no basis for distinguishing those within from those excluded, he asserts.

The Hunt Staff Report states at page 5: "There are a few thousand acres of mancos shale badlands adjacent to No Man Mesa. The greater portion of those badlands are within the WSA. Those outside the WSA are flatter and less sharply defined." Kincaid provides photographic evidence to dispute BLM's statements. While it appears that less than the majority of those lands were included in the WSA and that the photographs depict little difference in topographic relief, Kincaid has failed to establish his charge that the BLM exception eliminated a supplemental value. There is no dispute that mancos shale badlands exist in the WSA. Thus, the exception did not totally eliminate a supplemental value. That more or less shale lands might be desirable in the WSA is a decision on which we will defer to BLM's judgment.

21/ The Director's approval stated:

"Approval is granted for the requested exception with the following conditions:

"1. The boundary adjustment must not have the effect of detracting in any (significant) way from the wilderness values of the inventory unit. For instance, this adjustment should not eliminate supplemental values within the original unit. Additionally, it is extremely important that the eliminated acreage not reduce the overall size of the unit in a manner that detracts from the extent or quality of opportunities for solitude and recreation that would otherwise exist. As you recognize, overall size has an important bearing on the quality of wilderness experiences in a unit."

The overall size of the unit has been reduced pursuant to the exception without adequate justification, Kincaid asserts. The October 14 BLM decision states that BLM considered size in its reassessment of outstanding opportunities. Kincaid complains that no further explanation appears of record. The paucity of discussion cannot be denied. We cannot agree with Kincaid, however, concerning the consequences. He seeks reversal of the BLM decision relating to the 15,000 acres. We affirm. Considerable deference must be accorded BLM's conclusions reached after reassessment. Kincaid has failed to show error.

The BLM decision on the Mt. Pennell unit to subdivide the unit is reversed. The 45,000 acres in subunit A must be considered with the acreage in subunit B and must be included in the Mt. Pennell WSA. The decision to eliminate 15,000 acres in subunit B is affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part (See Appendix A).

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge.

APPENDIX A

| <u>Unit No.</u> | <u>Unit No.</u> | <u>Acreage App'd</u> | <u>Bd's Dc'n</u> |
|-----------------|----------------------|----------------------|--|
| UT-020-037 | Newfoundland Mts. | 23,266 | Affirmed |
| UT-020-129/130A | Dugway Mts. | 18,000 | Affirmed |
| UT-040-075 | Horse Spring Canyon | 30,000 | Affirmed |
| UT-040-076 | Carcass Canyon | 12,180 | Affirmed |
| UT-040-077 | Mudsprings Canyon | 18,065 | Affirmed |
| UT-040-204B | Central Wah Wah | 37,238 | Affirmed |
| UT-050-238 | Mt. Ellen/Blue Hills | 20,000 | Reversed |
| UT-050-241 | Fiddler Butte | 29,500 | Affirmed in part; Reversed in part |
| UT-050-248 | Mt. Pennell | 60,000 | Affirmed in part; Reversed in part |

